

WILMER CUTLER PICKERING
HALE AND DORR LLP

SONAL N. MEHTA (SBN 222086)
Sonal.Mehta@wilmerhale.com
2600 El Camino Real, Suite 400
Palo Alto, California 94306
Telephone: (650) 858-6000

DAVID Z. GRINGER (*pro hac vice*)
David.Gringer@wilmerhale.com
ROSS E. FIRSENBAUM (*pro hac vice*)
Ross.Firsenbaum@wilmerhale.com
RYAN CHABOT (*pro hac vice*)
Ryan.Chabot@wilmerhale.com

PAUL VANDERSLICE (*pro hac vice*)
Paul.Vanderslice@wilmerhale.com
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8800

Attorneys for Defendant Meta Platforms, Inc.

ARI HOLTZBLATT (SBN 354631)
Ari.Holtzblatt@wilmerhale.com
MOLLY M. JENNINGS (*pro hac vice*)
Molly.Jennings@wilmerhale.com
2100 Pennsylvania Ave NW
Washington, DC 20037
Telephone: (202) 663-6000

MICHAELA P. SEWALL (*pro hac vice*)
Michaela.Sewall@wilmerhale.com
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC., a Delaware
Corporation,

Defendant.

Case No. 3:20-cv-08570-JD

**DEFENDANT META PLATFORMS,
INC.'S CONDITIONAL PROFFER OF
EXPERT TESTIMONY IN THE
ADVERTISER CASE**

Judge: Hon. James Donato

INTRODUCTION

Meta intends to offer testimony from two experts: Dr. Steven Tadelis will cover damages and the competitive effects of the challenged conduct, and Dr. Catherine Tucker will cover market definition and monopoly power. Their testimony addresses and rebuts the opinions of Advertiser Plaintiffs’ putative experts Dr. Michael Williams, who covers market definition, monopoly power, and damages, and Dr. Tilman Klumpp, who covers competitive effects.

Advertisers also seek leave to offer a putative technical expert, Dr. Markus Jakobsson. If the Court permits Dr. Jakobsson to testify—and Meta’s position is that it should not—Meta respectfully seeks leave to offer the rebuttal expert testimony of Dr. Georgios Zervas. Dr. Jakobsson’s principal opinion is that Meta engaged in “wiretapping” through a market research tool called the Facebook Research App. Advertisers say that this testimony involves “very technical issues” and “an extremely technical set of facts.” April 18, 2024 Hr’g Tr. 12:6-9, 12:21-13:2. Meta maintains that Dr. Jakobsson’s opinions are improper expert testimony and irrelevant to any issue in this antitrust case.

However, should the Court accept Advertisers’ proffer and allow Dr. Jakobsson to testify, Dr. Zervas’s responsive technical opinions are important to Meta’s defense to Advertisers’ allegations. Dr. Zervas is a computer science and data science expert who holds a Ph.D. in Computer Science from Boston University, where he is now a tenured professor and a founding member of its Faculty of Computing & Data Sciences. If Dr. Jakobsson testifies, Dr. Zervas will provide a technical rebuttal explaining how Dr. Jakobsson’s analysis of the Facebook Research App is wrong. Should Dr. Jakobsson be allowed to testify, Dr. Zervas’s testimony will “be useful to the jury and the Court,” Dkt. 789, as it will allow the fact finder to hear technical testimony on this topic from both sides. Dr. Zervas’s testimony will not be “duplicative” of Dr. Tadelis or Dr. Tucker, *id.*, neither of whom offer technical opinions on this issue.

ARGUMENT

The Facebook Research App (which Advertisers and Dr. Jakobsson refer to as Meta’s “in-app action panel” or “IAAP” program) was a market research tool through which panelists who signed up to participate installed the app and consented to send Meta data about their usage of

1 other apps. Advertisers contend that Meta harmed competition by allegedly “wiretapping”
2 Snapchat through the Facebook Research App so that it could copy Snapchat’s public “Stories”
3 feature—despite Meta having already launched its own “Stories” feature before the alleged
4 “wiretapping” began—and to engage in other, still unspecified product development. Dr.
5 Jakobsson’s reports claim that the Facebook Research App’s technical method for collecting data
6 amounted to “wiretapping,” constituted an “unambiguous cybercrime,” and is “generally
7 associated with sophisticated cybercrime organizations and large nation-state actors.”

8 Dr. Jakobsson’s testimony is unnecessary and will not be useful to the factfinder. He did
9 not review the Facebook Research App’s code (or any other source code), use the app himself, or
10 even determine what data the app actually collected. His testimony also will not aid the jury in
11 determining liability. Advertisers’ claims turn on the competitive effects, if any, of Meta’s alleged
12 *use* of data collected through the Facebook Research App. The manner in which the data was
13 *collected* had no effect on competition, and Advertisers do not contend otherwise, so Dr.
14 Jakobsson’s testimony is irrelevant.

15 Nevertheless, if the Court allows Dr. Jakobsson to testify, it should allow Meta to offer Dr.
16 Zervas’s opinions in rebuttal. Dr. Zervas explains, in easy-to-understand terms, the technical
17 method by which the Facebook Research App collected data from consenting users’ devices, and
18 that comparable technologies are commonplace across the Internet and have numerous commercial
19 applications. All of this testimony will aid the jury in understanding the technical issues implicated
20 by Dr. Jakobsson’s proposed testimony.

21 If Advertisers are permitted to offer a technical expert on this topic without the opportunity
22 to present a rebuttal expert of its own, Meta would be prejudiced. Because they will be presented
23 with the veneer of expert analysis, the jury may give greater weight to Dr. Jakobsson’s opinions
24 about the Facebook Research App than to the testimony of Meta’s percipient fact witnesses. To
25 ensure that the jury hears testimony from an expert from a corresponding discipline, and that the
26 record is balanced and not unduly weighted towards Advertisers’ putative expert, Meta should be
27 permitted to offer its responsive technical expert if Dr. Jakobsson is permitted to testify.

CONCLUSION

For these reasons, Meta respectfully requests that, if the Court permits Dr. Markus Jakobsson to testify (which it should not do), it also permit Meta to offer Dr. Georgios Zervas's testimony in rebuttal.

Dated: August 9, 2024

Respectfully submitted,

By: /s/ Sonal N. Mehta

WILMER CUTLER PICKERING HALE
AND DORR LLP
Attorney for Defendant Meta Platforms, Inc.